



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Region I – New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912**

Approved OMB 201312-2020-002
Approval expires 02/28/2017

Sent via FOIAonline

March 28, 2016

Guy Musto
ExxonMobil Everett Terminal
52 Beacham Street
Everett, MA 02149

RE: Request for substantiation from an affected business in response to a request under the Freedom of Information Act (FOIA), Request # **EPA-R1-2016-001311**

Dear Mr. Gusto,

The Environmental Protection Agency (EPA) has received a request under the Freedom of Information Act (FOIA) for all documents in EPA's possession that relate to ExxonMobil's Everett Terminal, including the terminal's facility response plan (FRP).

ExxonMobil had not previously claimed the FRP, or any parts thereof, as confidential business information (CBI). Pursuant to 40 C.F.R. § 2.204(c)(2), on March 18, 2016, EPA contacted ExxonMobil to inquire whether or not it sought to claim certain information contained in the FRP, specifically the site diagrams at pages 5-23 and 80-98, as CBI. ExxonMobil responded that same day to assert a claim of CBI. Therefore, EPA is now acting according to the procedures at 40 C.F.R. § 2.204(d).

This letter is to notify you that the EPA Region 1 Office of Regional Counsel will be making a final confidentiality determination concerning the information identified above. If you feel that some or all of the referenced information is entitled to confidential treatment, please specify which portions of the information you consider confidential. Please be specific by page, paragraph and sentence when identifying the information subject to your claim. Any information not specifically identified as subject to a confidentiality claim will be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to your claim, please answer the following questions:

1. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
5. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
8. Any other issue you deem relevant.

Please note that if you claim any of the enclosed responsive information to be confidential, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 CFR Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

Your comments must be postmarked or hand delivered to this office, or e-mailed to Cris Schena, at schena.cristeen@epa.gov, by the 15th working day after your receipt of this letter.

You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information.

The EPA Office of Regional Counsel will make a final confidentiality determination concerning any information you claim to be confidential based on your response.

Should you have any questions in this matter, please call Michael Knapp, Office of Regional Counsel, at 617-918-1053.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bryan Olson", followed by a long horizontal line extending to the right.

Bryan Olson, Director
Office of Site Remediation & Restoration

cc: Michael Knapp, ORC
Cris Schena, R1 FOI Officer